

109TH CONGRESS
2D SESSION

S. 3650

To include costs incurred by the Indian Health Service, a federally qualified health center, an AIDS drug assistance program, certain hospitals, or a pharmaceutical manufacturer patient assistance program in providing prescription drugs toward the annual out of pocket threshold under part D of title XVIII of the Social Security Act and to provide a safe harbor for assistance provided under a pharmaceutical manufacturer patient assistance program.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2006

Mr. BINGAMAN (for himself, Mr. LAUTENBERG, Mr. MENENDEZ, Mr. DORGAN, Mr. KENNEDY, Ms. STABENOW, Mr. DAYTON, Mr. JOHNSON, Mrs. CLINTON, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To include costs incurred by the Indian Health Service, a federally qualified health center, an AIDS drug assistance program, certain hospitals, or a pharmaceutical manufacturer patient assistance program in providing prescription drugs toward the annual out of pocket threshold under part D of title XVIII of the Social Security Act and to provide a safe harbor for assistance provided under a pharmaceutical manufacturer patient assistance program.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Fill the Medi-
 5 care Rx Gap Act of 2006”.

6 **SEC. 2. INCLUDING COSTS INCURRED BY THE INDIAN**
 7 **HEALTH SERVICE, A FEDERALLY QUALIFIED**
 8 **HEALTH CENTER, AN AIDS DRUG ASSISTANCE**
 9 **PROGRAM, CERTAIN HOSPITALS, OR A PHAR-**
 10 **MACEUTICAL MANUFACTURER PATIENT AS-**
 11 **SISTANCE PROGRAM IN PROVIDING PRE-**
 12 **SCRIPTION DRUGS TOWARD THE ANNUAL**
 13 **OUT OF POCKET THRESHOLD UNDER PART D.**

14 (a) IN GENERAL.—Section 1860D–2(b)(4)(C) of the
 15 Social Security Act (42 U.S.C. 1395w–102(b)(4)(C)) is
 16 amended—

17 (1) in clause (i), by striking “and” at the end;

18 (2) in clause (ii)—

19 (A) by striking “such costs shall be treated
 20 as incurred only if” and inserting “subject to
 21 clause (iii), such costs shall be treated as in-
 22 curred if”;

23 (B) by striking “, under section 1860D–
 24 14, or under a State Pharmaceutical Assistance
 25 Program”; and

1 (C) by striking the period at the end and
2 inserting “; and”; and

3 (3) by inserting after clause (ii) the following
4 new clause:

5 “(iii) such costs shall be treated as in-
6 curred and shall not be considered to be
7 reimbursed under clause (ii) if such costs
8 are borne or paid—

9 “(I) under section 1860D–14;

10 “(II) under a State Pharma-
11 ceutical Assistance Program;

12 “(III) by the Indian Health Serv-
13 ice, an Indian tribe or tribal organiza-
14 tion, or an urban Indian organization
15 (as defined in section 4 of the Indian
16 Health Care Improvement Act);

17 “(IV) by a federally qualified
18 health center (as defined in section
19 1861(aa)(4));

20 “(V) under an AIDS Drug As-
21 sistance Program under part B of
22 title XXVI of the Public Health Serv-
23 ice Act;

24 “(VI) by a subsection (d) hos-
25 pital (as defined in section

1886(d)(1)(B)) that meets the requirements of clauses (i) and (ii) of section 340B(a)(4)(L) of the Public Health Service Act; or

“(VII) by a pharmaceutical manufacturer patient assistance program, either directly or through the distribution or donation of covered part D drugs, which shall be valued at the negotiated price of such covered part D drug under the enrollee’s prescription drug plan or MA–PD plan as of the date that the drug was distributed or donated.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to costs incurred on or after January 1, 2006.

SEC. 3. PROVIDING A SAFE HARBOR FOR PHARMACEUTICAL MANUFACTURER PATIENT ASSISTANCE PROGRAMS.

(a) SAFE HARBOR.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended—

(1) in subparagraph (G), by striking “and” at the end;

1 (2) in subparagraph (H), as added by section
2 237(d) of the Medicare Prescription Drug, Improve-
3 ment, and Modernization Act of 2003 (Public Law
4 108–173; 117 Stat. 2213)—

5 (A) by moving such subparagraph 2 ems to
6 the left; and

7 (B) by striking the period at the end and
8 inserting a semicolon;

9 (3) by redesignating subparagraph (H), as
10 added by section 431(a) of the Medicare Prescrip-
11 tion Drug, Improvement, and Modernization Act of
12 2003 (Public Law 108–173; 117 Stat. 2287), as
13 subparagraph (I);

14 (4) in subparagraph (I), as so redesignated—

15 (A) by moving such subparagraph 2 ems to
16 the left; and

17 (B) by striking the period at the end and
18 inserting “; and”; and

19 (5) by adding at the end the following new sub-
20 paragraph:

21 “(J) any remuneration paid by a pharma-
22 ceutical manufacturer patient assistance program,
23 either in cash or through the distribution or dona-
24 tion of covered Part D drugs (as defined in section
25 1860D–2(e)), to an individual enrolled in a prescrip-

1 tion drug plan under part D of title XVIII or in an
2 MA–PD plan under part C of such title.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply to remuneration paid on or after
5 January 1, 2006.

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